IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 5673 of 2004

Between:

K. Samba Siva Reddy, S/o. Govind Reddy,
R/o. Puchakayalamada, Pathikonda (M), Kurnool District.

..... PETITIONER

AND

1 The Gram Panchayath, Pathikonda, Kurnool District, rep. by

its Executive Officer/Panchayath Secretary,
Pathikonda, Kurnool District.

2 The Agricultural Market Committee, Pathikonda rep., by its

Assistant Director, Pathikonda, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring the auction notice of the first respondent in Rc.No.9/2004/A2, dated 9.3.2004 published by way of Tom Tom as arbitrary, illegal, and discriminatory and violative of Section 7(1) A.P.(Agricultural Produce and Live Stock) Market Act 1966 and violative of Article 21 of the Constitution of India and consequently set aside the same.

Counsel for the Petitioner:MR.K.JAGAN MOHAN REDDY

Counsel for the Respondent No.1: MR.C.B.RAMMOHAN REDDY

Counsel for the Respondent No.2: MR. BADANA BHASKARA RAO

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.5673 OF 2004

ORDER:

The petitioner is a resident of Puchakayalamada Village in Pattikonda Mandal, Kurnool District. The said village is part of local area of Pattikonda Gram Panchayat (hereafter called, the Gram Panchayat). He is aggrieved by auction notice dt.9.3.2004 issued by first respondent Gram Panchayat proposing to conduct public auction the right for collecting goodwill/market fee from various vendors in weekly animal market, weekly meat market, weekly vegetable market, weekly bus stand etc. The petitioner contends that the Government of Andhra Pradesh by notification issued vide G.O.Ms.No.823 issued in 1996 constituted Agricultural Market Committee for Pattikonda by reason of which the Gram Panchayat is not competent to collect any market fee or goodwill from the traders.

This Court admitted the Writ Petition on 9.4.2004 and stayed the impugned auction. The Gram Panchayat has now come forward with an application being

W.V.M.P.No.989 of 2004 praying this Court to vacate the interim order. In the counter affidavit of the first respondent Gram Panchayat, reliance is placed on various provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (Panchayat Raj Act) as well as Articles 240G and Article 243(1) of the Constitution of India in support of the contention that the Gram Panchayat is entitled to provide public facilities in accordance with the Constitutional provisions and for that purpose can collect market fee and goodwill amount from the traders in public markets as per Sections 104 and 108 of the Panchayat Raj Act.

Second respondent also filed a counter affidavit *inter alia* stating that as per two Division Bench judgments of this Court in Writ Petition No.16733 of 1995, dt.26.9.2001, and in Writ Appeal No.1575 of 2002, dt.24.11.2003, when once Agricultural Market Committee is constituted under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Market Act, 1966 (hereafter called, Market Act) by reason of Sections 29 and 30 of the said Act, it is only the Agricultural Market Committee which can levy and collect market fee and the Gram Panchayat has no power to auction right to collect market fee. Reliance is also placed on the decision of another Division Bench of this Court in **Agricultural Market Committee, Shankarpally v. Gram Panchayat, Shankerpally.**

The question raised in the Writ Petition, whether it is competent for the Gram Panchayat to auction right to collect market fee/goodwill amount from the traders in public markets within the jurisdiction of Gram Panchayat when once Agricultural Market Committee is constituted under Section 4 of the Market Act, is no more *res integra*. A Division Bench of this Court, to which I was a member, in W.P.No.16733 of 1995, dt.26.9.2001, held that once Agricultural Market Committee is constituted, the Gram Panchayat cannot realize market fee from notified area of the Market Committee. In both the cases, this Court relied on judgment of this Court in **Agricultural Market Committee, Shankarpally v. Gram Panchayat, Shankerpally** (supra). The Supreme Court in the recent judgment reported in **Talcher Municipality v. Talcher Regulated Market Committee** has considered the question with reference to Orissa Agricultural Produce Markets Act, 1956 and held as under:

> A market may be belonging to a municipality or gram Panchayat but once a market area has been declared under the provisions of the said Act will bring within its sweep even such markets. Sub-section (4) of Section 4 clearly mandates that even the market of a municipality or a gram Panchayat falling within the market area will have to be transferred if requisitioned therefor. In the event of such transfer, the net income derived therefrom by the market committee under Section 11 shall be shared equally by the market committee and the concerned municipality or gram panchayat every year. The proviso appended to sub-section (4) of section 4 furthermore stipulates that the share of the municipality or gram panchayat in any one year shall not be less than eighty per cent of the average net income derived by it from land or building or both so transferred during the three years immediately preceding the transfer.

As already observed by Division Bench of this Court in W.A.No.1575 of 2002, which was filed at the instance of first respondent, it is always open to first respondent to claim necessary share by way of compensation under sub-section (2) of Section 29

of the Market Act from second respondent.

The Writ Petition, for the above reasons, is allowed. No costs.

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(V.V.S.RAO, J)

22.9.2004

bnr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Wednesday the Twenty Second Day of September, Two Thousand and Four

DEPUTY REGISTRAR

To

1 The Executive Officer/Panchayat Secretary,

Gram Panchayath, Pathikonda, Kurnool District.

2 The Assistant Director, Agricultural Market Committee, Pathikonda.

Kurnool District.

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